

Court of Appeals, State of Michigan

ORDER

Daniel Barry Couch v Raymond A Correll

Docket No. 256899

LC No. 03-047997-NM

Mark J. Cavanagh
Presiding Judge

E. Thomas Fitzgerald

Jessica R. Cooper
Judges

The Court orders, pursuant to MCR 7.205(D)(2), that the trial court's July 29, 2003, order is VACATED. To the extent plaintiff's specific allegations of malpractice were addressed by this Court, or the trial court, in the context of the ineffective assistance of counsel claim in the prior criminal proceedings, the trial court properly granted summary disposition on the basis of collateral estoppel. *Barrow v Pritchard*, 235 Mich App 478; 597 NW2d 853 (1999). However, plaintiff's legal malpractice complaint makes several allegations which were apparently not addressed in the context of plaintiff's ineffective assistance of counsel claim. Such allegations of malpractice would not be barred by collateral estoppel. See *Schlumm v O'Hagan*, 173 Mich App 345, 356-357; 433 NW2d 839 (1989).

This matter is REMANDED to the trial court for further proceedings consistent with this order. The trial court shall determine which claims of malpractice were addressed, and which claims of malpractice were not addressed, by this Court or the trial court in the context of plaintiff's ineffective assistance of counsel claim. The trial court shall then apply the doctrine of collateral estoppel, and decide the motion for summary disposition, accordingly. We do not retain jurisdiction.

The motion to amend and correction of error is GRANTED.

The motion to take judicial notice is DENIED.

Plaintiff's motion to reply to defendant's answer is GRANTED to the extent the substance of the reply is considered by the Court. However, the request for sanctions contained in that motion is DENIED.

Judge Cooper would deny the delayed application for leave to appeal and deny the motion to reply to answer.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB - 1 2005
Date

Sandra Schultz Mengel
Chief Clerk